

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PAMELA A. BAUGHER

Plaintiff,

v.

KADLEC HEALTH SYSTEM dba
REGIONAL MEDICAL CENTER,
STATE OF WASHINGTON, and
ALLIANCE FOR CONSISTENT
CARE PROGRAM,

Defendants.

NO: 4:14-CV-5118-TOR

ORDER ON MOTIONS FOR
SUMMARY JUDGMENT AND
MOTION TO DISMISS

BEFORE THE COURT are Defendant Kadlec Health System's Motion for Summary Judgment (ECF No. 50), Plaintiff's Motion for Summary Judgment (ECF No. 55), Defendant Kadlec Health System's Motion to Strike (ECF No. 67), and Defendant Washington State's Motion to Dismiss (4:15-CV-5043-TOR, ECF No. 9).¹ These matters were heard with telephonic oral argument on September 1,

¹ Defendant Washington State's motion was filed prior to the Court's consolidation of Plaintiff's two cases, *see* ECF No. 12 in case file 4:15-CV-5043-TOR. All

ORDER ON MOTIONS FOR SUMMARY JUDGMENT AND MOTION TO
DISMISS ~ 1

1 2015. Plaintiff appeared *pro se*. Jerome R. Aiken appeared on behalf of
2 Defendant Kadlec Health Systems (“Kadlec”). Richard Arthur McCartan appeared
3 on behalf of Defendant Washington State. The Court has reviewed the briefing
4 and the record and files therein, heard from counsel, and is fully informed.

5 BACKGROUND

6 On November 26, 2014, Plaintiff filed a complaint in this Court alleging
7 Kadlec violated the Emergency Medical Treatment and Labor Act (“EMTALA”),
8 42 U.S.C. § 1395dd, by failing to evaluate or treat Plaintiff when she presented to
9 Kadlec’s emergency department on October 6, 2014. ECF No. 1. Plaintiff filed
10 her Final Amended Complaint (FAC) on March 3, 2015. ECF No. 38. Kadlec
11 filed an answer to the FAC on March 24, 2015. ECF No. 44.

12 On May 27, 2015, Plaintiff filed a complaint in the companion case alleging
13 claims against Kadlec, as well as Washington State and Defendant Alliance for
14 Consistent Care Program. 4:15-CV-5043-TOR, ECF No. 1. This complaint
15 alleges causes of action against Defendants for violating the Americans with
16 Disabilities Act (“ADA”), the Washington Law Against Discrimination
17 (“WLAD”), and the Fourteenth Amendment. *Id.* at 2. Given the same questions of
18

19 record notations herein refer to documents filed in 4:14-CV-5118-TOR, unless
20 otherwise noted.

1 fact and law raised in the two matters, the Court consolidated the cases on July 31,
2 2015. ECF No. 68; 4:15-CV-5043-TOR, ECF No. 12. Plaintiff's causes of action
3 articulated in her complaint in 4:15-CV-5043-TOR are thus incorporated into this
4 consolidated action. As it currently stands, Plaintiff has alleged violations of the
5 EMTALA, the ADA, the WLAD, and the Fourteenth Amendment against each
6 Defendant.

7 On July 1, 2015, Kadlec filed a motion for summary judgment challenging
8 Plaintiff's claim that Kadlec violated the EMTALA. ECF No. 50. Plaintiff
9 subsequently filed a cross-motion for summary judgment on her EMTALA claim.
10 ECF No. 55.

11 On July 15, 2015, Washington State filed a motion to dismiss all claims
12 against it pursuant to Federal Rule of Civil Procedure 12(b)(6). 4:15-CV-5043-
13 TOR, ECF No. 9. Plaintiff filed a response in opposition to that motion on July 21,
14 2015. 4:15-CV-5043-TOR, ECF No. 11.

15 FACTS

16 On October 6, 2014, Plaintiff experienced a sudden onset of pain and
17 flashing lights through the left side of her head and down through her left eye.
18 ECF No. 38 at 4. Plaintiff drove to the "Physicians Immediate Care" facility in
19 Richland, Washington, where she was told she may be suffering a "little stroke"
20 and that she should go to the emergency room. *Id.*

1 Plaintiff then drove to Kadlec's emergency department. ECF Nos. 38 at 4;
2 51 at ¶ 1. Plaintiff entered the emergency department through the ambulance bay.
3 ECF Nos. 38 at 4; 51 at ¶ 2; 52 at ¶¶ 2–3. Plaintiff was then escorted to the
4 reception area where she was asked to register. ECF No. 38 at 4; 51 at ¶ 3; 52 at ¶
5 4. Kadlec employs a standard registration procedure for all walk-in emergency
6 patients which requests information from patients in order to prioritize those with
7 greater need of medical care. ECF No. 52 at ¶ 4. It is not possible for a walk-in
8 patient to register at the ambulance bay where Plaintiff initially entered. ECF No.
9 52 at ¶ 4.

10 Plaintiff contends that she was unable to complete the registration process
11 because of her ongoing symptoms. ECF No. 38 at 4. Plaintiff contends further
12 that the receptionist said Plaintiff had “a [something] ALERT” and then
13 immediately told Plaintiff she was calling security and that Plaintiff would have to
14 leave or the police would be called and Plaintiff would be arrested. ECF No. 38 at
15 5. In fear of arrest, Plaintiff left the emergency department and returned to her car.
16 ECF No. 38 at 5. Plaintiff described her mindset after her departure as “terrified
17 confused struggling desperate—going to die.” *Id.*

18 Kadlec contends that Plaintiff left the emergency department voluntarily
19 after she refused to follow Kadlec's standard registration procedure and was
20 uncooperative with Kadlec staff. ECF Nos. 51 at ¶¶ 4–5, 8; 52 at ¶ 6. Kadlec

1 contends further that Plaintiff did not appear to be in any physical distress and did
2 not appear to need emergency care. ECF Nos. 51 at ¶¶ 5–6; 52 at ¶ 5.

3 After Plaintiff left the emergency department, she was later contacted by a
4 Richland Police officer near a park. ECF No. 38 at 5. The officer called an
5 ambulance, but Plaintiff refused help from the ambulance staff. ECF Nos. 38 at 5;
6 63 at 22. Plaintiff then returned home where her symptoms improved over the next
7 few days. ECF Nos. 38 at 5; 63 at 21.

8 DISCUSSION

9 I. Motion to Dismiss

10 A motion to dismiss for failure to state a claim pursuant to Federal Rule of
11 Civil Procedure 12(b)(6) tests the legal sufficiency of the Plaintiffs' claims.
12 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A complaint must contain a
13 “short and plain statement of the claim showing that the pleader is entitled to
14 relief.” Fed. R. Civ. P. 8(a)(2). This standard “does not require detailed factual
15 allegations, but it demands more than an unadorned, the-defendant-unlawfully-
16 harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*
17 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

18 To withstand dismissal, a complaint must contain “enough facts to state a
19 claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim
20 has facial plausibility when the plaintiff pleads factual content that allows the court

1 to draw the reasonable inference that the defendant is liable for the misconduct
2 alleged.” *Iqbal*, 556 U.S. at 678. “Naked assertion[s],” “labels and conclusions,”
3 or “formulaic recitation of the elements of a cause of action will not do.”
4 *Twombly*, 550 U.S. at 555, 557. While a plaintiff need not establish a probability
5 of success on the merits, he or she must demonstrate “more than a sheer possibility
6 that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678; *see also Johnson v.*
7 *City of Shelby*, 135 S.Ct. 346, 347 (2014) (per curiam) (“A plaintiff . . . must plead
8 facts sufficient to show that her claim has substantive plausibility.”).

9 Generally, in assessing whether Rule 8(a)(2) has been satisfied, a court must
10 first identify the elements of the plaintiff’s claim(s) and then determine whether
11 those elements could be proven on the facts pleaded. *See Iqbal*, 556 U.S. at 675.
12 While a plaintiff need not expressly identify a legal theory of liability, the plaintiff
13 must plead sufficient facts to establish the substantive plausibility of some claim of
14 liability. *See Johnson*, 135 S.Ct. at 347. In this evaluation, a court must accept all
15 factual allegations in the complaint as true and construe the pleadings in the light
16 most favorable to the party opposing the motion. *Sprewell v. Golden State*
17 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). However, the court need not accept
18 “naked assertions devoid of further factual enhancement.” *Iqbal*, 556 U.S. at 678
19 (internal quotations and brackets omitted).

1 Plaintiff's complaint asserting claims against Washington State does not
2 include any factual allegations of wrongdoing by Washington State. 4:15-CV-
3 5043-TOR, ECF No. 1. Plaintiff's complaint asserts that insurers and hospitals
4 devised a gambit by which to limit access to emergency rooms and contends this
5 saved money for Washington State and the hospitals. *Id.* at 3. The complaint also
6 asserts without any factual support that "Washington State has placed [restrictions]
7 on EMTALA." *Id.* Plaintiff fails to identify any such alleged restrictions. *Id.* The
8 factual content of Plaintiff's complaint does not allow the Court to draw a
9 reasonable inference that Washington State is liable for any misconduct, as it does
10 not specify any misconduct perpetrated by Washington State. Plaintiff alleges in
11 her response to the motion to dismiss that the Defendants conspired to thwart
12 EMTALA, the ADA, the WLAD, and the Fourteenth Amendment. 4:15-CV-5043-
13 TOR, ECF No. 11. Despite Plaintiff's contention that a conspiracy is "obvious,"
14 Plaintiff fails to point to any factual allegations that would support her claim. Such
15 naked, unsupported assertions of liability are insufficient to survive dismissal.
16 *Twombly*, 550 U.S. at 555, 557. As such, Plaintiff's claims against Washington
17 State lack facial plausibility and are therefore insufficiently pleaded. *See Iqbal*,
18 556 U.S. at 678.

19 In Plaintiff's response and at oral argument, Plaintiff further explained that
20 Washington State, through its Medicaid program has been trying to limit its costs

1 and after three emergency room treatments in a year an “Edie Alert” would be
2 placed in the file so hospital emergency rooms could shunt away to a social worker
3 the mentally ill, the drug addicted and the Medicaid recipients. It is this alleged
4 procedure that was agreed upon by Washington State and the hospitals that
5 Plaintiff contends is a violation of EMTALA, the ADA, the WLAD and the
6 Fourteenth Amendment. Washington State may well have participated in devising
7 a method to control health care costs, but that does not automatically equate to a
8 violation of one of the cited laws. It is just as likely that Washington State devised
9 a way to better care for these individuals with recurrent medical emergencies,
10 consistent with the law. Because naked, unsupported assertions of liability are
11 insufficient to survive dismissal, *Twombly*, 550 U.S. at 555, 557, the Court must
12 dismiss these claims.

13 “In dismissing for failure to state a claim, a district court should grant leave
14 to amend even if no request to amend the pleading was made, unless it determines
15 that the pleading could not possibly be cured by the allegation of other facts.” *Doe*
16 *v. United States*, 58 F.3d 494, 497 (9th Cir. 1995) (internal quotation marks
17 omitted). The Court finds that Plaintiff cannot cure her claims against Washington
18 State.

19 Under the EMTALA, Plaintiff may raise a civil claim against any
20 “participating hospital” that negligently violates a requirement of the EMTALA.

1 42 U.S.C. § 1395dd(d)(2)(A). Washington State is not a participating hospital
2 subject to civil liability under the EMTALA. *See* 42 U.S.C. § 1395dd(e)(2) (“The
3 term ‘participating hospital’ means a hospital that has entered into a provider
4 agreement under section 1395cc of this title.”). Amendment of Plaintiff’s
5 EMTALA claim against Washington State would be futile and the claim is
6 therefore dismissed without leave to amend. *See Serra v. Lappin*, 600 F.3d 1191,
7 1200 (9th Cir. 2010).

8 The Equal Protection clause of the Fourteenth Amendment confers a right
9 upon individuals to be free from unlawful discrimination at the hands of
10 governmental actors. *See, e.g., Barnes-Wallace v. City of San Diego*, 704 F.3d
11 1067, 1085 (9th Cir. 2012). Plaintiff has not alleged that any Washington State
12 actor participated in the events which occurred at the Kadlec emergency room on
13 October 6, 2014. Plaintiff’s factual allegations relate solely to the actions of
14 Kadlec employees. Amendment of Plaintiff’s Equal Protection claim against
15 Washington State would be futile and the claim is therefore dismissed without
16 leave to amend.

17 Likewise, under the ADA, Plaintiff has failed to allege that she was “denied
18 the benefits of the services, programs, or activities of a public entity.” 42 U.S.C.
19 § 12132. Amendment of the claim is futile as Plaintiff cannot allege facts that
20 would establish Kadlec was providing services as a public entity on behalf of

1 Washington State. *See* 42 U.S.C. § 12131(1) (“The term ‘public entity’ means —
2 (A) any State or local government; [or] (B) any department, agency, special
3 purpose district, or other instrumentality of a State or States or local government . .
4 . .”). Amendment of Plaintiff’s ADA claim against Washington State would be
5 futile and the claim is therefore dismissed without leave to amend.

6 Finally, under the WLAD, Plaintiff has failed to allege that the Kadlec
7 emergency room was a place of public accommodation operated by Washington
8 State. *See* RCW 49.60.040(2) (“Any place of public . . . accommodation . . .
9 includes . . . where medical service or care is made available”); *Duvall v.*
10 *Cnty. of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001) (“[T]he elements of a prima
11 facie claim of discrimination in a place of public accommodation under the WLAD
12 are: (1) the plaintiff is disabled; (2) defendant's establishment is a place of public
13 accommodation; (3) disabled persons are not provided services comparable to
14 those provided nondisabled persons by or at the place of public accommodation;
15 and (4) the disability was a substantial factor causing the discrimination.”).

16 Kadlec’s emergency room may be a public accommodation under the WLAD, but
17 Plaintiff has not and cannot allege facts which would establish the facial
18 plausibility that Washington State has any role in operation of Kadlec’s emergency
19 room. Amendment of Plaintiff’s WLAD claim against Washington State would be
20 futile and the claim is therefore dismissed without leave to amend.

1 Plaintiff's complaint does not allege facts which establish the facial
2 plausibility of any claim against Washington State. The Court concludes further,
3 that Plaintiff cannot allege any facts which would cure the defects identified. As
4 such, the Court dismisses with prejudice Plaintiff's claims against Washington
5 State.

6 II. Motion for Summary Judgment

7 Summary judgment may be granted to a moving party who demonstrates
8 "that there is no genuine dispute as to any material fact and that the movant is
9 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party
10 bears the initial burden of demonstrating the absence of any genuine issues of
11 material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then
12 shifts to the non-moving party to identify specific genuine issues of material fact
13 which must be decided at trial. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
14 256 (1986).

15 For purposes of summary judgment, a fact is "material" if it might affect the
16 outcome of the suit under the governing law. *Id.* at 248. A dispute concerning any
17 such fact is "genuine" only where the evidence is such that a reasonable factfinder
18 could find in favor of the non-moving party. *Id.* at 248. In ruling upon a summary
19 judgment motion, a court must construe the facts, as well as all rational inferences
20 therefrom, in the light most favorable to the non-moving party. *Scott v. Harris*,

1 550 U.S. 372, 378 (2007). “[A] district court is not entitled to weigh the evidence
2 and resolve disputed underlying factual issues.” *Chevron Corp. v. Pennzoil Co.*,
3 974 F.2d 1156, 1161 (9th Cir. 1992). Only evidence which would be admissible at
4 trial may be considered. *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 773 (9th Cir.
5 2002).

6 Plaintiff alleges that Kadlec violated the EMTALA when it failed to evaluate
7 or treat her on October 6, 2014. ECF Nos. 38; 55. Defendant contends that
8 Plaintiff left voluntarily and that she has failed to produce sufficient evidence on
9 the merits of her claim to survive summary judgment. ECF Nos. 50; 62.

10 “Congress enacted EMTALA, commonly known as the ‘Patient Anti-
11 Dumping Act,’ in response to the growing concern about the provision of adequate
12 medical services to individuals, particularly the indigent and the uninsured, who
13 seek care from hospital emergency rooms.” *Jackson v. E. Bay Hosp.*, 246 F.3d
14 1248, 1254 (9th Cir. 2001). The EMTALA imposes a series of duties upon
15 hospital emergency departments. Relevant in this matter is the duty of a hospital to
16 provide adequate screening of individuals for acute symptoms of emergency
17 medical conditions.²

18
19 ² The matter before the Court never progressed beyond the initial screening
20 requirement and the Court’s inquiry focuses on that requirement.

1 If any individual “comes to the emergency department and a request is made
2 on the individual’s behalf for examination or treatment for a medical condition, the
3 hospital must provide for an appropriate medical screening examination within the
4 capacity of the hospital’s emergency department . . . to determine whether or not
5 an emergency medical condition . . . exists.” 42 U.S.C. § 1395dd(a). An
6 “emergency medical condition” is “a medical condition manifesting itself by acute
7 symptoms of sufficient severity (including severe pain) such that the absence of
8 immediate medical attention could reasonably be expected to result in — (i)
9 placing the health of the individual . . . in serious jeopardy, (ii) serious impairment
10 of bodily functions, or (iii) serious dysfunction of any bodily organ or part”
11 42 U.S.C. § 1395dd(e)(1)(A).

12 “[A] hospital satisfies EMTALA’s ‘appropriate medical screening’
13 requirement if it provides a patient with an examination comparable to the one
14 offered to other patients presenting similar symptoms, unless the examination is so
15 cursory that it is not ‘designed to identify acute and severe symptoms that alert the
16 physician of the need for immediate medical attention to prevent serious bodily
17 injury.’” *Jackson*, 246 F.3d at 1256 (quoting *Eberhardt v. City of Los Angeles*, 62
18 F.3d 1253, 1257 (9th Cir. 1995)). The EMTALA’s screening requirement is
19 mandatory: once a request for evaluation or treatment is made, a hospital must
20 provide an adequate screening unless some other aspect of the EMTALA excuses

1 the duty. 42 U.S.C. § 1395dd(a) (“... the hospital *must* provide for an appropriate
2 medical screening” (emphasis added); *see also Harry v. Marchant*, 291 F.3d
3 767, 773 (11th Cir. 2002) (“Congress’ solution was to guarantee patient entry into
4 the medical system via mandatory appropriate medical screenings and stabilization
5 prior to transfer.”); *Summers v. Baptist Med. Ctr. Arkadelphia*, 91 F.3d 1132,
6 1137–38 (8th Cir. 1996) (“[T]he statute is, as plaintiff argues, a strict-liability
7 provision. If a hospital fails to provide an appropriate medical screening
8 examination, it is liable, no matter what the motivation was for this failure.”);
9 *Stevison by Collins v. Enid Health Sys., Inc.*, 920 F.2d 710, 713 (10th Cir. 1990)
10 (“Section 1395dd(a) contains mandatory language. Under the statute, the hospital
11 *must* provide for medical screening if a request is made. We construe this statute
12 as imposing a strict liability standard subject to those defenses available in the act.”
13 (emphasis in original) (citation omitted)). The burden rests upon Kadlec to
14 demonstrate that it is excused from its screening duty. *Stevison*, 920 F.2d at 713–
15 14.

16 It is undisputed that Plaintiff presented to Kadlec’s emergency department
17 requesting evaluation and treatment on October 6, 2104, thereby invoking
18 [Plaintiff’s Kadlec’s](#) duty to provide adequate medical screening. 42 U.S.C. §
19 1395dd(a). There is also no genuine dispute that Kadlec failed to provide Plaintiff
20 with adequate medical screening to determine whether Plaintiff’s acute symptoms

1 were of sufficient severity to be considered an “emergency medical condition.”

2 Plaintiff’s sworn statements indicate no such screening was provided. In
3 response, Kadlec submitted a single affidavit from an employee who recalls the
4 events of October 6, 2104. ECF No. 52. In this affidavit, Paul Brumfield, a
5 registered nurse, states that while he was located “in an emergency department
6 treatment room” he overheard Plaintiff enter the emergency department yelling the
7 “entire time.” *Id.* at 52 ¶¶ 2–3 (“Ms. Baugher was not yelling about any medical
8 complaints, but rather was simply yelling.”). Mr. Brumfield also states, “Based
9 upon what I overheard from Ms. Baugher, she did not appear in any physical
10 distress. There appeared to be no need for emergency care.” *Id.* at ¶ 5. Mr.
11 Brumfield’s vague reference to overheard comments is insufficient to establish that
12 Kadlec provided Plaintiff with an adequate examination of the severity of her
13 symptoms to determine whether she was in fact suffering from an emergency
14 medical condition. *See* 42 U.S.C. § 1395dd(a), (e)(1)(A). Neither has Kadlec
15 established that Mr. Brumfield is an individual qualified to make such an
16 examination from his distant vantage point in another room. *See* 42 C.F.R. §
17 489.24(a)(1)(i) (“The examination must be conducted by an individual(s) who is
18 determined qualified by hospital bylaws or rules and regulations and who meets
19 the requirements of § 482.55 of this chapter concerning emergency services
20 personnel and direction”). Kadlec fails to present any evidence to rebut

1 Plaintiff's contention that she was not provided an adequate medical screening on
2 October 6, 2014.

3 Instead, Kadlec defends on grounds that it was not required to provide
4 Plaintiff with an adequate screening because of Plaintiff's own conduct. First,
5 Kadlec contends that it need not provide examination or treatment to patients who
6 do not follow its prescribed registration procedure. ECF No. 50 at 3–5. The
7 section of the federal regulations to which Kadlec cites for this argument is
8 applicable to “necessary stabilizing treatment” required *after* an adequate screening
9 is performed; it is not applicable to the initial screening itself. *See* 42 C.F.R.
10 § 489.24(d)(4)(iv).³ A hospital may define its own screening procedures based
11 upon its capabilities, “including ancillary services routinely available to the
12 emergency department,” but nothing in the statute allows a hospital to predicate
13 screening upon completion of a registration form. 42 U.S.C. § 1395dd(a); *see also*
14 42 C.F.R. § 489.24(d)(4)(iv) (“Reasonable registration processes may not unduly

15 _____
16 ³ Likewise, the district court case to which Kadlec cites also involved alleged
17 wrongful actions, “not as part of the screening and stabilization process, but after
18 [plaintiff's] admission to the hospital.” *Quinn v. BJC Health Sys.*, 364 F. Supp. 2d
19 1046, 1054 (E.D. Mo. 2005). The analogy to *Quinn* is not appropriate on the facts
20 before the Court.

1 discourage individuals from remaining for further evaluation.”). Rather, the statute
2 and regulations impose an unconditional requirement that a hospital provide an
3 adequate medical screening within its capabilities when a patient has come to the
4 emergency department seeking evaluation and treatment. 42 U.S.C. § 1395dd(a);
5 42 C.F.R. § 489.24(a)(1).

6 Kadlec further contends that in refusing to follow the registration procedure,
7 Plaintiff voluntarily withdrew her request for treatment and left the emergency
8 department of her own free will. *See* ECF No. 51 at ¶ 8. A hospital may be
9 excused from the duty to screen if a presenting patient voluntarily withdraws her
10 request for examination or treatment. *See Stevison*, 920 F.2d at 713 (“Here, there
11 is a factual dispute whether plaintiff withdrew her initial request for treatment. It is
12 this alleged withdrawal, rather than a failure to consent, that is at issue.”).

13 However, Plaintiff vigorously disputes that she left voluntarily and contends she
14 left under duress, the threat of arrest.

15 Plaintiff’s sworn statements unequivocally establish she left because a
16 receptionist told her that she would be arrested and jailed if she did not. ECF No.
17 38 at 5; 55; 57 (“I did not at all voluntarily leave Kadlec contrary to Kadlec’s
18
19
20

1 account of events.”).⁴ The record contains a document created by Kadlec which
2 indicates there was an “Edie Alert” associated with Plaintiff that reads:

3 Pt does not have a [primary care physician (“PCP”)] at this time.
4 Multiple attempts at locating at [sic] PCP willing to take this pt has
5 been made. Her behavior creates a barrier to any physician willing to
6 accept her. She has been discharged from two PCP’s [sic] and she has
7 had multiple refusals to take her on as a new patient due to her
8 behavior and unwillingness to undergo psych evaluation. No
9 controlled substances should be administered in the ED or prescribed
10 from the ED for subjective pain. Pt exhibits bizarre behavior and it
11 has been encouraged that she undergo psychiatric evaluation but she
12 refuses.

13 ECF No. 2 at 2-3. The language of the alert further supports Plaintiff’s testimony
14 that the receptionist read the alert and then, upon reading it, ordered Plaintiff to
15 leave because Plaintiff had exhibited bizarre behavior in the past.

16 To rebut Plaintiff’s statements, Kadlec relies primarily upon two statements
17 in Mr. Brumfield’s affidavit. First, Mr. Brumfield states, “It is my understanding

18 ⁴ A verified complaint, based upon personal knowledge and setting forth specific
19 facts admissible in evidence, can be used as an opposing affidavit in evaluating
20 motions for summary judgment. *Schroeder v. McDonald*, 55 F.3d 454, 460 (9th
Cir. 1995). Plaintiff’s FAC was verified because Plaintiff stated under penalty of
perjury that the contents were true. ECF No. 38 at 2, 6; *see also Schroeder*, 55
F.3d at 460 n.10. As such, the Court treats the FAC as Plaintiff’s affidavit for
purposes of evaluating Kadlec’s and Plaintiff’s motions for summary judgment.

1 in speaking with fellow staff after Ms. Baugher left the emergency department that
2 she had failed to cooperate with Kadlec staff and complete the registration and
3 triage process.” This statement is inadmissible hearsay and may not be considered
4 on a motion for summary judgment. *Orr*, 285 F.3d at 773.

5 Second, Mr. Brumfield states, “At no time did I hear a Kadlec staff member
6 threaten Ms. Baugher with arrest.” ECF No. 52 at ¶ 6. Mr. Brumfield does not
7 assert that he was present for the entirety of the events on October 6, 2014. In fact,
8 his affidavit relies heavily on what Mr. Brumfield “heard” while elsewhere or
9 learned from other employees after the events concluded. *See* ECF No. 52. This
10 statement merely establishes that Mr. Brumfield did not himself hear any statement
11 threatening Plaintiff with arrest. It does not contradict or dispute Plaintiff’s
12 testimony that such a statement was made to her by the receptionist.

13 Kadlec also relies upon examples of Plaintiff’s prior visits to Kadlec and
14 other emergency departments to imply that on October 6, 2014, Plaintiff was
15 acting in accordance with her alleged penchant for “voluntarily leaving hospitals
16 prior to receiving treatment.” ECF No. 62; *see also* ECF Nos. 53; 63. These prior
17 presentations to emergency departments constitute inadmissible prior act evidence.
18 Fed. R. Evid. 404(b) (“Evidence of a crime, wrong, or other act is not admissible to
19 prove a person’s character in order to show that on a particular occasion the person
20

1 acted in accordance with the character.”).⁵ Conspicuously absent from the
2 evidence Kadlec presents to support its motion and to oppose Plaintiff’s motion is
3 any declaration or affidavit by those who actually interacted directly with Plaintiff
4 on October 6, 2014. Kadlec has failed to present any admissible evidence to rebut
5 Plaintiff’s sworn testimony that she was told to leave Kadlec’s emergency
6 department on October 6, 2014.⁶

7 The strongest admissible evidence relevant to the ultimate determination
8 whether Plaintiff voluntarily withdrew her request for examination and left the

9 ⁵ Kadlec has made no attempt to establish the admissibility of these instances as
10 “habit” evidence under Rule 406. *See United States v. Angwin*, 271 F.3d 786, 799
11 (9th Cir. 2001) (“In deciding whether certain conduct constitutes habit, courts
12 consider three factors: (1) the degree to which the conduct is reflexive or semi-
13 automatic as opposed to volitional; (2) the specificity or particularity of the
14 conduct; and (3) the regularity or numerosity of the examples of the conduct.”),
15 *overruled on other grounds, United States v. Lopez*, 484 F.3d 1186 (9th Cir. 2007)
16 (en banc).

17 ⁶ Likewise, that portion of the “Event Chronology” submitted by Plaintiff
18 containing an admission of a party-opponent, Fed R. Evid. 801(d)(2), also supports
19 Plaintiff’s testimony that she was told to leave. ECF No. 55 at 4 (“THE FEMALE
20 WAS ASKED TO LEAVE THE LOCATION”).

1 hospital of her own volition is Plaintiff's undisputed sworn statements.⁷ The Court
2 concludes this undisputed evidence shows Plaintiff left only because she was
3 threatened with arrest. *Cf. Stevison*, 920 F.2d at 713–14 (“Because there is no
4 dispute here that a request was made, plaintiff satisfied her initial burden under the
5 statute. It was then incumbent upon defendant to show by a preponderance of the
6 evidence that the request was withdrawn.”). As such, Plaintiff is entitled to
7 judgment as a matter of law that Kadlec violated the EMTALA by failing to
8 provide Plaintiff with an adequate medical screening.

9 Defendant argues that regardless of any alleged substantive violation,
10 Plaintiff cannot sustain her EMTALA claim because Plaintiff “has not established
11 that she in fact suffered personal harm that was directly caused by Kadlec.” ECF
12 Nos. 50 at 5; 62 at 3–4. The EMTALA “authorizes two types of enforcement, an
13 administrative action for civil money penalties and a private right of action for civil
14 damages.” *Eberhardt*, 62 F.3d at 1256; *see also* 42 U.S.C. § 1395dd(d). Civil
15 penalties under § 1395dd(d)(1) may only be initiated by the Secretary of Health

16
17 ⁷ Kadlec contends that Plaintiff's statements must be disregarded because they are
18 “self-serving, conclusory statements.” ECF No. 61 at 3–4. Plaintiff's statements
19 encompass her own personal knowledge of the events of October 6, 2104, and are
20 both admissible and relevant.

1 and Human Services. 42 U.S.C. § 1320a-7a(c).

2 The EMTALA's private right of action, however, allows "[a]ny individual
3 who suffers personal harm as a direct result of a participating hospital's violation"
4 of an EMTALA requirement to "obtain those damages available for personal injury
5 under the law of the State in which the hospital is located, and such equitable relief
6 as is appropriate." 42 U.S.C. § 1395dd(d)(2)(A). "By enacting this provision,
7 Congress explicitly directed federal courts to look to state law in the state where
8 the hospital is located to determine both the type and amount of damages available
9 in EMTALA actions." *Power v. Arlington Hosp. Ass'n*, 42 F.3d 851, 860 (4th Cir.
10 1994); *see also Hardy v. New York City Health & Hosp. Corp.*, 164 F.3d 789, 793
11 (2d Cir. 1999) ("EMTALA's deference to state law is also apparent in its express
12 adoption of state law as to the damages recoverable.").

13 Under Washington law, a plaintiff asserting that a health care provider failed
14 to provide acceptable care must show that "[s]uch failure was a proximate cause of
15 the injury complained of." RCW 7.70.040. The Washington Supreme Court
16 recognizes valid claims of medical malpractice for damages founded solely on
17 emotional distress, without requiring proof of physical injury or objective
18 symptomatology of the distress. *Berger v. Sonneland*, 144 Wash. 2d 91, 111–13
19 (2001) (en banc). Thus, Plaintiff may maintain a cause of action under the
20 EMTALA for emotional distress that is proximately caused by Kadlec's conduct.

1 *See, e.g., Abney v. Univ. Med. Ctr. of S. Nevada*, 2011 WL 468349 at *4–5 (D.
2 Nev. Feb. 4, 2011) (“[A] plaintiff’s alleged emotional harm, prolonged suffering,
3 and delayed recovery can create genuine issues of material fact on the element of
4 personal harm.”); *Pugh v. Doctors Med. Ctr.*, 2010 WL 2836971 at *4–5 (N.D.
5 Cal. 2010) (applying California emotional distress standards to EMTALA claim).

6 Here, Plaintiff has not identified any direct physical injury she suffered as a
7 result of her departure from Kadlec’s emergency department without adequate
8 screening. As Plaintiff has admitted, her symptoms improved on their own over
9 the next few days. ECF Nos. 38 at 5; 63 at 22 (“[The symptoms are] greatly
10 diminished at that point, which leads me to think this is getting better.”).

11 Plaintiff’s sworn affidavits do, however, indicate that she may have suffered
12 from emotional distress after she left Kadlec’s emergency department. *See* ECF
13 No. 38 at 5 (“ . . . i am terrified confused struggling desperate—going to die . . .
14 .”). Kadlec does not dispute these statements. Whether Plaintiff’s distress is
15 ultimately compensable, however, requires the factfinder to consider the
16 foreseeability of emotional distress based upon Kadlec’s relationship to Plaintiff
17 and the egregiousness of Kadlec’s conduct. *See Schmidt v. Coogan*, 181 Wash. 2d
18 661, 673–74 (2014) (en banc). The causation of harm “is generally a question of
19 fact for the jury, unless the proof is insufficient to raise a reasonable inference that
20 the act complained of was the proximate cause of the injury.” *Lies v. Farrell*

1 *Lines, Inc.*, 641 F.2d 765, 770 (9th Cir. 1981) (internal quotation marks omitted).

2 The Court concludes that a reasonable factfinder could find Plaintiff's distress is
3 compensable and that it was proximately caused by Kadlec's actions. As such,
4 there remains a genuine dispute whether Plaintiff suffered a direct personal harm in
5 this matter for which she may recover under the EMTALA.⁸

6 In sum, there is no genuine dispute that Plaintiff presented to Kadlec's
7 emergency department on October 6, 2104, requesting evaluation and treatment for
8 what she perceived as stroke-like symptoms. There is also no dispute that Kadlec
9 failed to provide Plaintiff with an adequate medical screening of those symptoms.
10 Finally, there is no genuine dispute that Plaintiff left the emergency department
11 because she was told that if she did not leave immediately the police would be
12 called and she would be arrested. Plaintiff is entitled to summary judgment on
13 each of these factual matters. However, there remains a genuine dispute whether

14 _____
15 ⁸ The EMTALA also affords aggrieved individuals "such equitable relief as is
16 appropriate." 42 U.S.C. § 1395dd(d)(2)(A). Plaintiff had previously requested
17 injunctive relief in this matter which the Court denied at that time. *See* ECF Nos.
18 2; 4; 27; 30. The Court will consider a renewed request for injunctive relief if and
19 when Plaintiff establishes that she suffered a direct personal harm as a result of
20 Kadlec's actions.

1 Kadlec's actions proximately caused Plaintiff emotional distress and this matter
2 must be determined by a jury.

3 Plaintiff's motion for summary judgment regarding her EMTALA claim is
4 therefore granted in part. Plaintiff's claims against Kadlec for violation of the
5 ADA, the WLAD, and the Fourteenth Amendment, as articulated in her complaint
6 filed in 2:15-CV-5043-TOR (ECF No. 1), remain pending in this consolidated
7 matter.

8 The file does not reflect that Defendant Alliance for Consistent Care
9 Program has been properly served. Fed. R. Civ. P. 4(m) requires service within
10 120 days after the complaint is filed. Plaintiff must serve Alliance for Consistent
11 Care timely or it will be dismissed from the case.

12 III. Motion to Strike

13 Defendant has requested the Court to strike two documents Plaintiff has
14 filed. ECF No. 67. On July 28 and 29, 2015, Plaintiff filed two documents which
15 she captioned "(Expanded) Reply to Defendant's (Expanded) Response to
16 Plaintiff's Motion for Summary Judgment." ECF Nos. 65; 66. The local rules of
17 this Court allow a *pro se* litigant 21 days to file a reply. LR 7.1(c)(2). The local
18 rules also allow up to 10 pages for a reply to a dispositive motion. LR 7.1(e)(1).
19 Moreover, pleadings can generally be amended within 21 days. *See* Fed. R. Civ. P.
20 15(a). Plaintiff's serial replies neither violate the timeliness nor page length

requirements of the Local Rule. Defendant's motion to strike will be denied.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Defendant Kadlec Health System's Motion for Summary Judgment (ECF No. 50) is **DENIED**.
2. Plaintiff's Motion for Summary Judgment (ECF No. 55) is **GRANTED in part**.
3. Defendant Washington State's Motion to Dismiss (4:15-CV-5043-TOR, ECF No. 9) is **GRANTED**. All claims against Defendant Washington State are dismissed with prejudice.
4. Defendant Kadlec Health System's Motion to Strike Plaintiff's Multiple Replies (ECF No. 67) is **DENIED**.
5. Plaintiff must properly serve Defendant Alliance for Consistent Care Program within 120 days after the complaint was filed or it will be dismissed from the case. Fed. R. Civ. P. 4(m).

The District Court Executive is hereby directed to enter this Order, provide copies to counsel and Plaintiff, and terminate Defendant Washington State from the matter.

DATED September 3, 2015.



Thomas O. Rice

THOMAS O. RICE
United States District Judge